

PART XI

SECURITIES AND FUTURES APPEALS TRIBUNAL

210. Securities and Futures Appeals Tribunal

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(5) ~~The Tribunal may, w~~Where the Chief Executive considers appropriate, additional Tribunals may be established for the purposes of any review~~be divided into 2 or more divisions,~~—whereupon the provisions of this or any other Ordinance shall apply, subject to necessary modifications, to each ~~division of~~ such additional ~~the Tribunals~~ (including appointment of the chairman and other members of, ~~—such division~~ and all matters concerning, each of such ~~division~~additional Tribunals) as they apply to the Tribunal.

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¹ At the Bills Committee meeting on 10 December 2001, some Members expressed the view that the concept of “division” might cause confusion when in effect each “division” of the Tribunal operates independently as a Tribunal with the same powers and functions. We accordingly propose further amendment to Paper CSA10/01 to remove the reference to “division” and provide instead for the establishment of more than one Tribunal.

211. Applications for review of specified decisions

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(3B) The Tribunal shall not grant an extension under subsection (3A) unless -

- (a) the person who has ~~made the application~~applied² for the grant of the extension pursuant to that subsection and the relevant authority have been given a reasonable opportunity of being heard; and
- (b) it is satisfied that there is a good cause for granting the extension.

(4) Where the Tribunal receives a notice ~~given to it~~² under subsection (1), it shall as soon as reasonably practicable thereafter serve a copy of the notice on the relevant authority.

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² We propose further technical drafting amendments to Paper CSA10/01 in the light of the comment of a Member expressed at the Bills Committee meeting on 10 December 2001.

212. Proceedings before Tribunal

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(4) Subject to section 214(3), the standard of proof required to determine any question or issue before the Tribunal shall be ~~that the standard of proof~~³ applicable to civil proceedings in a court of law.

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³ We propose further technical drafting amendment to Paper CSA10/01 in the light of the comment of a Member expressed at the Bills Committee meeting on 14 December 2001 on clause 244(7), which is similar to this subclause.

213. Powers of Tribunal

(1) ⁴Subject to the provisions of Part 1 of Schedule 7 and any rules made by the Chief Justice under section 226, the Tribunal, for the purposes of a review, may, on its own motion or on the application of any of the parties to the review -

- (a) receive and consider any material by way of oral evidence, written statements, ~~— or~~ documents ~~or otherwise~~, even if the material would not be admissible in evidence in civil or criminal proceedings in a court of law;
- (b) by notice in writing signed by the chairman of the Tribunal require a person to attend before it at any sitting ~~relating to the review~~ and to give evidence and produce any article, record or document in his possession relating to the subject matter of the review;

* * * * *

- (j) determine the procedure to be followed in ~~connection with the review~~;

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⁴ We propose further technical drafting amendments to Paper CSA10/01 in the light of the comment of a Member expressed at the Bills Committee meeting on 14 December 2001 on clause 245(1), which is similar to this subclause.

214. Contempt dealt with by Tribunal

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(4) ⁵Notwithstanding anything in this section and any other provisions of this Ordinance -

(a) no power ~~to punish for contempt~~ may be exercised ~~against any person under or pursuant to this section to determine whether to punish any person for contempt~~ in respect of any conduct if -

(i) criminal proceedings have previously been instituted against the person under section 213(2) in respect of the same conduct; and

(ii) (A) those criminal proceedings remain pending; or

(B) by reason of the previous institution of those criminal proceedings, no criminal

⁵ We propose further drafting amendments to Paper CSA10/01 in the light of the comment of a Member expressed at the Bills Committee meeting on 14 December 2001 on clause 253, which is similar to this subclause. The amendment seeks to clarify the operation of the “no double jeopardy” rule that the provision should apply whether the person concerned has been convicted or acquitted. The original reference to the Court’s power to punish for contempt should accordingly be to the Court’s power to initiate action to determine whether to punish for contempt.

proceedings may again be
lawfully instituted against that
person under such section in
respect of the same conduct;

(b) no criminal proceedings may be instituted
against any person under section 213(2) in
respect of any conduct if -

(i) any power ~~to punish for contempt~~ has
previously been exercised ~~against~~
~~the person under or pursuant to~~ this
section to determine whether to
punish the person for contempt in
respect of the same conduct; and

(ii) (A) proceedings arising from the
exercise of such power remain
pending; or

(B) by reason of the previous
exercise of such power, no power
~~to punish for contempt~~ may again
be lawfully exercised ~~against~~
~~that person under or pursuant to~~
this section to determine
whether to punish the person for
contempt in respect of the same
conduct.

220A.Applications for stay of decisions of Tribunal⁶

A party to a review may, at any time after the determination of the review, apply to the Tribunal for a stay of a decision of the Tribunal relating to the review, whereupon the Tribunal may, where it considers appropriate, by order grant the stay, subject to such conditions as to costs, payment of money into the Tribunal or otherwise as the Tribunal considers appropriate.

221. Appeal to Court of Appeal

(1) A party to a review who is dissatisfied with a decision of the Tribunal relating to the review ~~(whether or not it is a finding or determination in respect of the review, or an order made under section 211(3A), 216 or 220)~~⁷ may appeal to the Court of Appeal against the decision on a point of law.

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⁶ When Paper CSA10/01 was considered at the Bills Committee meeting on 10 December 2001, a Member commented that the SFAT should have the discretion to order stay of its own decision if it is likely that an appeal against its decision will be lodged and if the SFAT considers a stay appropriate. We accordingly propose a new clause 220A to this effect.

⁷ On reflection, we take the view that the bracketed non-exhaustive elaboration adds nothing to the meaning of “a decision”, as the term would no doubt cover a finding or determination in respect of the review, an order made under clauses 211(3A), 216 and 220, and other decisions. We therefore propose this further amendment to Paper CSA10/01 for brevity. Similar amendment is also proposed to clause 222.

⁵(2A) Where the Court of Appeal varies, or substitutes any other decision for, ~~the a decision in question~~ under subsection (2)(ba), the decision ~~in question~~ as varied or the other decision substituting for the decision ~~in question~~ (as the case may be) may be any decision (whether more or less onerous) that the Tribunal had power to make in respect of the review in question, whether or not under the same provision as that under which the decision ~~in question~~ has been made.

* * * * *

222. No stay of execution on appeal

⁶Without prejudice to section 220A, ~~t~~The lodging of an appeal under section 221 does not by itself operate as a stay of execution of a decision of the Tribunal ~~(whether or not it is a finding or determination in respect of a review, or an order made under section 211(3A), 216 or 220)~~⁷ unless the Court of Appeal otherwise orders, and any stay of execution may be subject to such conditions as to costs, payment of money into

⁸ We propose further drafting amendments to Paper CSA10/01 in the light of the comment of a Member expressed at the Bills Committee meeting on 14 December 2001 on clause 258, which is similar to this subclause. The deletion of "in question" proposed here would not distort the meaning of this provision.

the Tribunal or otherwise as the Court of Appeal considers appropriate.

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Financial Services Bureau
Securities and Futures Commission
7 January 2002

PART XIII

MARKET MISCONDUCT TRIBUNAL

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243. Market Misconduct Tribunal

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(6) Schedule 8 shall have effect in relation to the appointment of members ~~and replacement members~~¹ of the Tribunal, the appointment and the role of Presenting Officers and of persons appointed to assist Presenting Officers, and to the proceedings and sittings of, and procedural and other matters concerning, the Tribunal.

¹ Amendment consequential to the proposed amendments to delete the definition of “replacement member” in Schedule 8 in the light of the comment made by a Member at the Bills Committee meeting on 14 December 2001.

(7) ~~The Tribunal may, w~~Where the Chief Executive considers appropriate, ~~be divided into 2 or more divisions~~additional Tribunals may be established for the purposes of any proceedings instituted under section 244², whereupon the provisions of this or any other Ordinance shall apply, subject to necessary modifications, to each ~~division of the~~of such additional² Tribunals (including appointment of the chairman and other members of, ~~such division~~ and all matters concerning, each of such ~~division~~ additional Tribunals²) as they apply to the Tribunal.

* * * * *

² At the Bills Committee meeting on 14 December 2001, some Members commented that the concept of "division" might cause confusion when in effect each "division" of the Tribunal operates independently as a Tribunal with the same powers and functions. We accordingly propose further amendment to Paper No. CSA12/01 to remove the reference to "division" and provide instead for the establishment of more than one Tribunal.

244. Market misconduct proceedings

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(4) Subject to subsections (5) and (6), the Tribunal may identify a person as having engaged in market misconduct pursuant to subsection (3)(b) if -

* * * * *

(b) notwithstanding that he has not perpetrated any conduct which constitutes the market misconduct

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(i) the Tribunal identifies another person which is a corporation as having engaged in market misconduct pursuant to subsection (3)(b); and

(ii) the market misconduct occurred with ~~the~~ ^{his} consent or connivance ~~of,~~ ^{him} ~~him~~ as an officer of the corporation;

* * * * *

³ Technical drafting amendment in response to the comment made by a Member at the Bills Committee meeting on 14 December 2001.

(7) Subject to section 253(3), the standard of proof required to determine any question or issue before the Tribunal shall be ~~that~~ the standard of proof⁴ applicable to civil proceedings in a court of law.

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⁴ Technical drafting amendment in response to the comment made by a Member at the Bills Committee meeting on 14 December 2001.

245. Powers of Tribunal

(1) Subject to the provisions of Schedule 8 and any rules made by the Chief Justice under section 260, the Tribunal, for the purposes of any proceedings instituted under section 244, may, on its own motion or on the application of any party before it -

- (a) receive and consider any material by way of oral evidence, written statements ~~or~~ documents ~~or otherwise~~⁵, even if the material would not be admissible in evidence in civil or criminal proceedings in a court of law;
- (b) by notice in writing signed by the chairman of the Tribunal require a person to attend before it at any sitting ~~relating to the proceedings~~⁶ and to give evidence and produce any article, record or document in his possession relating to the subject matter of the proceedings;

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⁵ Members questioned at the Bills Committee meeting on 14 December 2001 whether the words “or otherwise” were necessary. Given the wide definition of “document” in Schedule 1, we agree that “or otherwise” can be deleted.

⁶ Technical drafting amendment in response to the comment made by a Member at the Bills Committee meeting on 14 December 2001.

(j) determine the procedure to be followed in
~~connection with~~⁷the proceedings;

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⁷ Technical drafting amendment in response to the comment made by a Member at the Bills Committee meeting on 14 December 2001.

249. Orders, etc. of Tribunal

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(5A) Where the Tribunal makes an order under subsection (1)(e) or (f) requiring the payment of costs as costs reasonably incurred in relation or incidental to any proceedings instituted under section 244——

~~(a)~~ subject to any rules made by the Chief Justice under section 260, Order 62 of the Rules of High Court (Cap. 4 sub. leg.) applies to the taxation of the costs; ~~and~~ —

~~(b) the Tribunal may order that the costs shall be taxed on the basis of one of the scales of costs in the Schedules to Order 62 of the Rules of the High Court (Cap. 4 sub. leg.).~~⁸ —

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⁸ At the Bills Committee meeting on 14 December 2001, a Member queried if clause 249(5A)(b) in Paper No. CSA12/01 dated 3 December 2001 was necessary. Having reviewed the matter with our legal adviser, we believe that clause 249(5A)(b) should be covered by clause 249(5A)(a) and hence can be deleted. We also propose to delete clauses 250(5A)(b) and 252(4), which are the same as clause 249(5A)(b).

250. Further orders in respect of
officers of corporation

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(5A) Where the Tribunal makes under subsection (1) an order referred to in section 249(1)(e) or (f) requiring the payment of costs as costs reasonably incurred in relation or incidental to any proceedings instituted under section 244—1

~~(a)~~ subject to any rules made by the Chief Justice under section 260, Order 62 of the Rules of High Court (Cap. 4 sub. leg.) applies to the taxation of the costs; ~~and~~1

~~(b) the Tribunal may order that the costs shall be taxed on the basis of one of the scales of costs in the Schedules to Order 62 of the Rules of the High Court (Cap. 4 sub. leg.)⁸.~~1

* * * * *

252. Costs

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~~(4) The Tribunal may order that any costs awarded under this section shall be taxed on the basis of one of the scales of costs in the Schedules to Order 62 of the Rules of the High Court (Cap. 4 sub. leg.).⁸~~

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253. Contempt dealt with by Tribunal

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(4) Notwithstanding anything in this section and any other provisions of this Ordinance -

(a) no power ~~to punish for contempt~~ may be exercised ~~against any person~~ under or pursuant to this section to determine whether to punish any person for contempt⁹ in respect of any conduct if -

(i) criminal proceedings have previously been instituted against the person under section 245(2), 246(6), 249(9) or 250(9) in respect of the same conduct; and

(ii) (A) those criminal proceedings remain pending; or

⁹ At the Bills Committee meeting on 14 December 2001, a Member questioned whether the word "exercised" would cover the case where the person had been tried but subsequently acquitted. The amendment seeks to clarify the operation of the "no double jeopardy" rule that the provision should apply whether the person concerned has been convicted or acquitted. The original reference to the Court's power to punish for contempt should accordingly be to the Court's power to initiate action to determine whether to punish for contempt.

(B) by reason of the previous institution of those criminal proceedings, no criminal proceedings may again be lawfully instituted against that person under such section in respect of the same conduct;

(b) no criminal proceedings may be instituted against any person under section 245(2), 246(6), 249(9) or 250(9) in respect of any conduct if -

(i) any power ~~to punish for contempt~~ has previously been exercised against the person under or pursuant to this section to determine whether to punish the person for contempt⁹ in respect of the same conduct; and

(ii) (A) proceedings arising from the exercise of such power remain pending; or

(B) by reason of the previous exercise of such power, no power ~~to punish for contempt~~ may again be lawfully exercised ~~against that person~~ under or pursuant to this section to determine whether to punish the person for contempt⁹ in respect of the same conduct.

* * * * *

¹⁰256A. Applications for stay of orders of Tribunal under section 249, 250, 251 or 252

Any person in respect of whom an order has been made under section 249, 250, 251 or 252 may apply to the Tribunal for a stay of the order, whereupon the Tribunal may, where it considers appropriate, by order grant the stay, subject to such conditions as to costs, payment of money into the Tribunal or otherwise as the Tribunal considers appropriate.

¹⁰ In response to the comment made by a Member at the Bills Committee meeting on 14 December 2001, we propose new clause 256A to provide the MMT with the flexibility to stay its own orders where it considers appropriate.

257. Appeal to Court of Appeal

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(2) A person in respect of whom an order has been made under section 249, 250, 251~~-or-~~, 252 or 256A¹¹ may appeal to the Court of Appeal against the order.

¹¹ Technical drafting amendment to allow for appeal to the Court of Appeal against a decision of the MMT to grant or refuse to grant a stay of execution of its orders. This amendment is consequential to the insertion of new clause 256A.

258. Powers of Court of Appeal on appeal

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(2) In an appeal under section 257(2), the Court of Appeal may -

- (a) confirm, vary or set aside the order appealed against; and
- (b) where the order is set aside, substitute ~~another for the order any other order~~ it considers appropriate ~~(whether more or less onerous), being any order that the Tribunal had power to make in respect of the appellant, whether or not under the same provision as that under which the order has been made~~¹².

¹²(2A) Where the Court of Appeal varies, or substitutes any other finding or, determination or order for, ~~the a finding or, determination or order in question~~ under subsection (1)(ba) or (2)(a) or (b), the finding or, determination or order ~~in question~~ as varied or the other finding or, determination or order substituting for the finding or, determination or order ~~in question~~ (as the case may be) may be =

¹² **Technical amendment to Paper No. CSA12/01 dated 3 December 2001 for greater clarity. The relocation of "whether more or less onerous" from clause 258(2)(b) to new clause 258(2A)(b) is consistent with the drafting of clause 258(1)(ba). The Law Draftsman has also further refined the drafting of clause 258(2A) in the light of the comments made by a Member at the Bills Committee meeting on 14 December 2001.**

(a) in the case of subsection (1)(ba), any finding or determination (whether more or less onerous) that the Tribunal had power to make for the purposes of the proceedings in question; or
(b) in the case of subsection (2)(a) or (b), any order (whether more or less onerous) that the Tribunal had power to make in respect of the appellant,

whether or not under the same provision as that under which the finding ~~or~~, determination or order ~~in question~~ has been made.

¹³(2B) Where on appeal the Court of Appeal remits any matter to the Tribunal under section 258(1)(c), ~~without limiting the generality of that section, unless~~ the Court of Appeal otherwise directs, ~~may direct that the matter in question, upon being remitted to the Tribunal, shall be disposed of by~~

~~(a) the same members of the Tribunal disposing of the matter may be the same as, or different from, those of the Tribunal from which the appeal in question lies; or.~~

¹³ In response to the comments made by a Member at the Bills Committee meeting on 14 December 2001, we have further refined the drafting to provide for the possibility that the “same Tribunal” may not be reconstituted as certain members are no longer available.

~~(b) the Tribunal constituted in such manner as the
Court of Appeal considers appropriate.~~

~~¹⁴(2C) Where, upon a matter being remitted to it under
section 258(1)(c), the Tribunal is constituted in accordance
with the terms of any direction given by the Court of Appeal
under subsection (2B), the validity of the proceedings before
the Tribunal shall not be called into question by reason only
that members of the Tribunal are not the same as those of the
Tribunal from which the appeal in question lies.~~

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¹⁴ We proposed to add new clause 258(2C) in Paper No. CSA12/01 dated 3 December 2001, to complement new clause 258 (2B) and to remove any doubt as to the validity of the proceedings of the “different” MMT constituted in accordance with the direction of the Court of Appeal. Members commented at the Bills Committee meeting on 14 December 2001 that clause 258(2C) might not be necessary. Given the latest amendments to clause 258(2B), we agree that clause 258(2C) may be deleted.

259. No stay of execution on appeal

¹⁵Without prejudice to section 256A, neither the lodging of an appeal nor the filing of an application for leave to appeal under section 257 by itself operates as a stay of execution of a finding or determination or an order (as the case may be) of the Tribunal unless the Court of Appeal otherwise orders, and any stay of execution may be subject to such conditions as to costs, payment of money into the Tribunal or otherwise as the Court of Appeal considers appropriate.

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¹⁵ Technical amendment consequential to the insertion of new clause 256A.

272. Civil liability for market misconduct

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(3) For the purposes of this section, a person shall, subject to subsection (4), be regarded as having committed a relevant act in relation to market misconduct if -

* * * * *

- (b) (i) another person which is a corporation has committed a relevant act in relation to market misconduct under paragraph (a); and
- (ii) the market misconduct occurred with ~~the~~ his¹⁶ consent or connivance ~~of,~~ ~~him~~¹⁶ as an officer of the corporation; or

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¹⁶ Technical drafting amendment in line with that made to clause 244(4)(b)(ii). See Note 3 above.

Supplementary Note to
the Annex to Paper No. CSA16/01
dated 28 November 2001

SCHEDULE 1 [ss. 2, 19, 66,
160, 166, 169, 169A, 194
& 392 & Sch.9]

INTERPRETATION AND GENERAL PROVISIONS

PART 1

INTERPRETATION

1. Interpretation of this Ordinance

In this Ordinance, unless otherwise defined or excluded or
the context otherwise requires -

"accredited" (隸屬) means accredited to a licensed corporation with
the Commission's approval¹ under section 121 of this
Ordinance;

* * * * *

²"dealing" (交易) -

¹ We propose this further minor technical amendment for greater clarity.

² In the light of the comment of the Legal Service Division of the Legislative Council, we have reviewed the application of the definitions of "dealing in futures contracts" and "dealing in securities" and propose this further amendment to Paper CSA16/01. This additional amendment is of technical nature and seeks to rectify the inadvertent extension of the exclusions in the definitions in Schedule 6, which are tailored for the purposes of licensing regulated activities, to the general definition.

(a) in relation to securities, means, whether as principal or agent, making or offering to make an agreement with another person, or inducing or attempting to induce another person, to enter into or to offer to enter into an agreement -

(i) for or with a view to acquiring, disposing of, subscribing for or underwriting securities; or

(ii) the purpose or pretended purpose of which is to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the value of securities; or

(b) in relation to futures contracts, means, whether as principal or agent -

(i) making or offering to make an agreement with another person to enter into, or to acquire or dispose of, a futures contract;

(ii) inducing or attempting to induce another person to enter into, or to offer to enter into, a futures contract; or

(iii) inducing or attempting to induce another person to acquire or dispose of a futures contract;

~~"dealing in futures contracts" (期貨合約交易) has the meaning assigned to it by Part 2 of Schedule 6 to this Ordinance;~~

~~"dealing in securities" (證券交易) has the meaning assigned to it by Part 2 of Schedule 6 to this Ordinance;~~

* * * * *

"relevant provisions" (有關條文) means the provisions of -

- (a) this Ordinance;
- (b) Parts II and XII of the Companies Ordinance (Cap. 32), so far as those Parts relate, directly or indirectly, to the performance of functions relating to -
 - (i) prospectuses;
 - (ii) the purchase by a corporation of its own shares;
 - (iii) a corporation giving financial assistance for the acquisition of its own shares,

whether or not such functions have been made the
subject of a transfer order under section 25 or 68³
of this Ordinance;

* * * * *

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³ Clauses 25 and 68 are basically mirror provisions relating to the transfer of the functions under the same range of provisions, but the former from the SFC to a recognized exchange company and the latter from the SFC to a recognized exchange controller. We propose this further minor technical amendment to rectify the omitted reference to clause 68.

Supplementary Note to
Annex 1 to Paper No. CSA15/01
dated 6 December 2001

SCHEDULE 9 [ss. 230, 232, 234,
392, 393, 394 & 395]

SAVINGS, TRANSITIONAL, CONSEQUENTIAL AND
RELATED PROVISIONS, ETC.

PART 1
SAVINGS, TRANSITIONAL AND SUPPLEMENTAL ARRANGEMENTS

**Part II of this Ordinance (Securities and
Futures Commission)**

2. Without prejudice to section 3 of this Ordinance -

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(c) ¹any person holding office as the chairman or deputy
chairman, or as an executive director or non-
executive director, of the Commission immediately
before the commencement of Part II of this Ordinance
shall upon such commencement ~~continue to hold~~be
deemed to have been appointed, on the same terms
and conditions as were applicable had this

¹ Members considered Paper CSA15/01 at the Bills Committee meeting on 14 December 2001 and invited the Legal Service Division of the Legislative Council to set out in writing his opinion on any difference in the legal effect of the use of "as if", "deemed" and "regarded". Having considered the written opinion, the Department of Justice advises that there is indeed no difference in the legal effect of their use throughout the context of Schedule 9. This notwithstanding, we have taken on board amendments recommended by the Assistant Legal Adviser for allaying his concern about any perceived difference in the legal effect.

Ordinance not been enacted, the corresponding office ~~under this Ordinance as if he had been appointed on such terms and conditions in accordance with the provisions regarding appointment to such corresponding office~~ under that Part and Schedule 2 to this Ordinance;

- (d) ¹the Advisory Committee constituted under section 10 of the repealed Securities and Futures Commission Ordinance immediately before the commencement of Part II of this Ordinance shall upon such commencement ~~continue in existence as if it had~~ be deemed to have been constituted under section 7 of and Schedule 2 to this Ordinance;
- (e) ¹any committee which has been established under section 6 of the repealed Securities and Futures Commission Ordinance and which is in existence immediately before the commencement of Part II of this Ordinance shall upon such commencement ~~continue in existence as if it had~~ be deemed to have been established under section 8 of this Ordinance;
- (f) ¹any person holding office as a member of the Advisory Committee referred to in paragraph (d), or as a member of a committee referred to in paragraph (e), immediately before the commencement of Part II of this Ordinance shall upon such commencement ~~continue to hold~~ be deemed to have been

appointed, on the same terms and conditions as were applicable had this Ordinance not been enacted, the corresponding office ~~under this Ordinance as if he had been appointed on such terms and conditions in accordance with the provisions regarding appointment to such corresponding office under that Part and Schedule 2 to this Ordinance;~~

- (g) ¹any person employed or engaged in any office, other than that referred to in paragraph (c) or (f), by the Commission under or pursuant to any provision of the repealed Securities and Futures Commission Ordinance immediately before the commencement of Part II of this Ordinance shall upon such commencement ~~continue to be so~~ be deemed to have been employed or engaged in the same office, on the same terms and conditions as were applicable had this Ordinance not been enacted, ~~as if he had been employed or engaged under or pursuant to that Part on such terms and conditions.~~

**Part III of this Ordinance (Exchanges, Clearing
Houses and Investor Compensation Companies)**

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5. On the commencement of Division 2 of Part III of this Ordinance

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(a) ¹the Stock Exchange Company and the Futures Exchange Company shall each be deemed to have been ~~be a~~ ~~recognized as an~~ exchange company ~~as if, upon such commencement, each of them had been served a notice under section 19(2) of this Ordinance recognizing it as an exchange company, and the other provisions of this Ordinance (including sections 19(3) and 28) shall apply accordingly with all necessary modifications;~~

(b) ¹the rules of -

(i) the Stock Exchange Company made under section 34 (except subsection (1)(b)) of the repealed Stock Exchanges Unification Ordinance and approved under section 35 of that Ordinance; and

(ii) the Futures Exchange Company approved under section 14 of the repealed Commodities Trading Ordinance,

which are in effect immediately before such commencement shall ~~upon such commencement continue to have effect as if they were rules be deemed to have been~~ made under section 23 of this Ordinance and approved under section 24(3) of this Ordinance;

(c) ¹the respective constitutions of the Stock Exchange Company and the Futures Exchange Company, which are in effect immediately before such commencement shall ~~upon such commencement continue~~ be deemed to have effect as if each of them had been approved under section 24 of this Ordinance; and

(d) ¹any appointment of a person as chief executive of the Stock Exchange Company or the Futures Exchange Company which is in effect immediately before such commencement shall ~~upon such commencement continue~~ be deemed to have effect, ~~on the same terms and conditions as were applicable had this Ordinance not been enacted, as if the appointment had been approved under section 26 of this Ordinance.~~

6. ¹On the commencement of Division 3 of Part III of this Ordinance, the HKSCC, HKFECC and SEOCH shall each be deemed to ~~be~~ have been recognized as a clearing house ~~as if, upon such commencement, each of them had been served a notice under section 37(1) of this Ordinance recognizing it as a clearing house, and~~

~~the other provisions of this Ordinance (including sections 37(2) and 43) shall apply accordingly with all necessary modifications.~~

* * * * *

9. Without limiting the generality of section 7 -

(a) ¹a notice which is published under section 4(4) of the repealed Securities and Futures (Clearing Houses) Ordinance and which is in effect immediately before the commencement of Division 3 of Part III of this Ordinance shall upon such commencement ~~continue to be deemed to have effect as if it had~~ be deemed to have effect as if it had been published under section 41(7) of this Ordinance; and

(b) ¹the rules of the HKSCC, HKFECC and SEOCH which -
(i) have been approved under section 4(7) of the repealed Securities and Futures (Clearing Houses) Ordinance; or
(ii) have been submitted or cause to be submitted under section 4(5) of that Ordinance,

and which are in effect immediately before the commencement of Division 3 of Part III of this Ordinance shall upon such commencement ~~continue to have effect as if~~ be deemed to have been -

- (A) in the case of subparagraph (i), ~~they were rules approved under section 41(3) of this Ordinance;~~ or
- (B) in the case of subparagraph (ii), ~~they were rules submitted or caused to be submitted under section 41(2)(b) of this Ordinance.~~

10. ¹On the commencement of Division 4 of Part III of this Ordinance, the HKEC ~~which is~~ shall be deemed to be a have been recognized as an exchange controller under section ~~19 of the repealed Exchanges and Clearing Houses (Merger) Ordinance shall upon such commencement continue to be so deemed as if it had been served a notice under section 59(2) of this Ordinance recognizing it as an exchange controller, and the other provisions of this Ordinance (including sections 59(3) and 72) shall apply accordingly with all necessary modifications.~~

* * * * *

13. Without limiting the generality of section 11 -
- (a) ¹a notice which is published under section 10(6) of the repealed Exchanges and Clearing Houses (Merger)

Ordinance and which is in effect immediately before the commencement of Division 4 of Part III of this Ordinance shall upon such commencement ~~continue to be deemed~~ to have effect as if it had been published under section 67(7) of this Ordinance;

(b) ¹the rules of the HKEC which have been approved under section 10(3) of the repealed Exchanges and Clearing Houses (Merger) Ordinance and which are in effect immediately before the commencement of Division 4 of Part III of this Ordinance shall upon such commencement ~~continue to have effect as if they were rules~~ be deemed to have been approved under section 67(3) of this Ordinance;

(c) ¹any approval which is given under section 6(2) of the repealed Exchanges and Clearing Houses (Merger) Ordinance and which is in effect immediately before the commencement of Division 4 of Part III of this Ordinance shall upon such commencement ~~continue to be deemed~~ to have effect as if the approval had been given under section 61(1) of this Ordinance;

(d) ¹any appointment of a person as chairman, chief executive or chief operating officer of a recognized exchange controller which is in effect immediately before the commencement of Division 4 of Part III of this Ordinance shall upon such commencement ~~continue to be deemed~~ to have effect, on

~~the same terms and conditions as were applicable~~
~~had this Ordinance not been enacted, as if the~~
~~appointment had been approved under section 69 or~~
70 (as the case may be) of this Ordinance; and

(e) ¹the Risk Management Committee established under section 9 of the repealed Exchanges and Clearing Houses (Merger) Ordinance shall upon the commencement of Division 4 of Part III of this Ordinance ~~continue in existence as if it had be~~ deemed to have been established under section 65 of this Ordinance.

* * * * *

Part V of this Ordinance (Licensing and Registration)

Corporations other than exempt dealers
and exempt investment advisers

22. Subject to section 54, a corporation which immediately before the commencement of Part V of this Ordinance is -

(a) ¹registered under the repealed Securities Ordinance as a dealer shall, upon such commencement, be ~~regarded as~~ deemed to have been licensed under section 115(1) of this Ordinance for Type 1, Type 4, Type 6 and (subject to the condition specified in section 50) Type 9 regulated activities;

- (b) ¹registered under the repealed Securities Ordinance as an investment adviser shall, upon such commencement, be ~~regarded as~~deemed to have been licensed under section 115(1) of this Ordinance for Type 4, Type 6 and (subject to the condition specified in section 50) Type 9 regulated activities;
- (c) ¹registered under the repealed Securities Ordinance as a securities margin financier shall, upon such commencement, be ~~regarded as~~deemed to have been licensed under section 115(1) of this Ordinance for Type 8 regulated activity;
- (d) ¹registered under the repealed Commodities Trading Ordinance as a dealer shall, upon such commencement, be ~~regarded as~~deemed to have been licensed under section 115(1) of this Ordinance for Type 2, Type 5 and (subject to the condition specified in section 51) Type 9 regulated activities;
- (e) ¹registered under the repealed Commodities Trading Ordinance as a commodity trading adviser shall, upon such commencement, be ~~regarded as~~deemed to have been licensed under section 115(1) of this Ordinance for Type 5 and (subject to the condition specified in section 51) Type 9 regulated activities;

(f) ¹licensed under the repealed Leveraged Foreign Exchange Trading Ordinance as a leveraged foreign exchange trader shall, upon such commencement, be ~~regarded as~~deemed to have been licensed under section 115(1) of this Ordinance for Type 3 regulated activity,

¹and ~~as having~~to have complied with the requirement of section 124(1)(a) and (b) of this Ordinance, and, subject to section 52, shall be so ~~regarded as~~deemed for a period of 2 years from such commencement.

23. ¹Subject to section 54, where a corporation is ~~regarded as~~deemed under section 22 ~~as~~to have been licensed, any director of that corporation who is an individual and immediately before the commencement of Part V of this Ordinance is -

(a) ¹registered under the repealed Securities Ordinance as a dealer of that corporation shall, upon such commencement, be ~~regarded as~~deemed to have been licensed as a licensed representative under section 119(1) of this Ordinance for Type 1, Type 4, Type 6 and (subject to the condition specified in section 50) Type 9 regulated activities and ~~as~~ accredited to that corporation;

(b) ¹registered under the repealed Securities Ordinance as an investment adviser of that corporation shall, upon such commencement, be ~~regarded as~~deemed to

have been licensed as a licensed representative under section 119(1) of this Ordinance for Type 4, Type 6 and (subject to the condition specified in section 50) Type 9 regulated activities and ~~as~~ accredited to that corporation;

(c) ¹registered under the repealed Securities Ordinance as a securities margin financier's representative of that corporation shall, upon such commencement, be ~~regarded as~~deemed to have been licensed as a licensed representative under section 119(1) of this Ordinance for Type 8 regulated activity and ~~as~~ accredited to that corporation;

(d) ¹registered under the repealed Commodities Trading Ordinance as a dealer of that corporation shall, upon such commencement, be ~~regarded as~~deemed to have been licensed as a licensed representative under section 119(1) of this Ordinance for Type 2, Type 5 and (subject to the condition specified in section 51) Type 9 regulated activities and ~~as~~ accredited to that corporation;

(e) ¹registered under the repealed Commodities Trading Ordinance as a commodity trading adviser of that corporation shall, upon such commencement, be ~~regarded as~~deemed to have been licensed as a licensed representative under section 119(1) of this Ordinance for Type 5 and (subject to the

condition specified in section 51) Type 9 regulated activities and ~~as~~ accredited to that corporation;

- (f) ¹licensed under the repealed Leveraged Foreign Exchange Trading Ordinance as a representative of that corporation shall, upon such commencement, be ~~regarded as~~ deemed to have been licensed as a licensed representative under section 119(1) of this Ordinance for Type 3 regulated activity and ~~as~~ accredited to that corporation,

¹and ~~as~~ approved under section 125(1) of this Ordinance as a responsible officer of that corporation, and, subject to section 52, shall be so ~~regarded as~~ deemed for a period of 2 years from such commencement.

24. ¹Subject to section 54, where a corporation is ~~regarded as~~ deemed under section 22 ~~as~~ to have been licensed, any individual not being a director of that corporation who immediately before the commencement of Part V of this Ordinance is -

- (a) ¹registered under the repealed Securities Ordinance as a dealer's representative of that corporation shall, upon such commencement, be ~~regarded as~~ deemed to have been licensed as a licensed representative under section 119(1) of this Ordinance for Type 1, Type 4, Type 6 and (subject to the condition specified in section 50) Type 9 regulated activities and ~~as~~ accredited to that corporation;

- (b) ¹registered under the repealed Securities Ordinance as an investment representative of that corporation shall, upon such commencement, be ~~regarded as deemed~~ to have been licensed as a licensed representative under section 119(1) of this Ordinance for Type 4, Type 6 and (subject to the condition specified in section 50) Type 9 regulated activities and ~~as~~ accredited to that corporation;
- (c) ¹registered under the repealed Securities Ordinance as a securities margin financier's representative of that corporation shall, upon such commencement, be ~~regarded as deemed~~ to have been licensed as a licensed representative under section 119(1) of this Ordinance for Type 8 regulated activity and ~~as~~ accredited to that corporation;
- (d) ¹registered under the repealed Commodities Trading Ordinance as a dealer's representative of that corporation shall, upon such commencement, be ~~regarded as deemed~~ to have been licensed as a licensed representative under section 119(1) of this Ordinance for Type 2, Type 5 and (subject to the condition specified in section 51) Type 9 regulated activities and ~~as~~ accredited to that corporation;

(e) ¹registered under the repealed Commodities Trading Ordinance as a commodity trading adviser's representative of that corporation shall, upon such commencement, be ~~regarded as~~deemed to have been licensed as a licensed representative under section 119(1) of this Ordinance for Type 5 and (subject to the condition specified in section 51) Type 9 regulated activities and ~~as~~ accredited to that corporation;

(f) ¹licensed under the repealed Leveraged Foreign Exchange Trading Ordinance as a representative of that corporation shall, upon such commencement, be ~~regarded as~~deemed to have been licensed as a licensed representative under section 119(1) of this Ordinance for Type 3 regulated activity and ~~as~~ accredited to that corporation,

¹and, subject to section 52, shall be so ~~regarded as~~deemed for a period of 2 years from such commencement.

Persons who are exempt dealers or
exempt investment advisers

25. Subject to section 54 -

(a) an authorized financial institution which
immediately before the commencement of Part V of
this Ordinance is -

(i) ¹an exempt dealer within the meaning of
the repealed Securities Ordinance shall,
upon such commencement, be ~~regarded as~~
deemed to have been registered under
section 118(1) of this Ordinance for Type
1, Type 4, Type 6 and (subject to the
condition specified in section 50) Type
9 regulated activities;

(ii) ¹an exempt investment adviser within
the meaning of the repealed Securities
Ordinance shall, upon such commencement,
be ~~deemed to have been regarded as~~
registered under section 118(1) of this
Ordinance for Type 4, Type 6 and (subject
to the condition specified in section 50)
Type 9 regulated activities,

¹and, subject to section 52, shall be so ~~regarded~~deemed for a period of 2 years from such commencement;

(b) a corporation (other than an authorized financial institution), partnership or individual who immediately before the commencement of Part V of this Ordinance is -

(i) ¹an exempt dealer within the meaning of the repealed Securities Ordinance shall, upon such commencement, be deemed to be ~~regarded as~~ a licensed corporation that ~~is~~ has been licensed under section 115(1) of this Ordinance for Type 1, Type 4, Type 6 and (subject to the condition specified in section 50) Type 9 regulated activities;

(ii) ¹an exempt investment adviser within the meaning of the repealed Securities Ordinance shall, upon such commencement, be deemed to be ~~regarded as~~ a licensed corporation that ~~is~~ has been licensed under section 115(1) of this Ordinance for Type 4, Type 6 and (subject to the condition specified in section 50) Type 9 regulated activities,

¹and, subject to section 52, shall be so ~~regarded~~deemed for a period of 2 years from such commencement, and for so long as such corporation, partnership or individual is so ~~regarded~~deemed, the requirement of section 124(1)(a) and (b) and section 130(1)² of this Ordinance shall not apply to it.

26. Where immediately before the commencement of Part V of this Ordinance an individual is engaged -

- (a) by an authorized financial institution; or
- (b) by a corporation (other than an authorized financial institution), partnership or individual,

¹to perform any act which, after such commencement, would constitute a regulated function in relation to a regulated activity for which the institution is ~~regarded~~deemed under section 25(a) ~~as to have been registered~~ or the corporation, partnership or individual is ~~regarded~~deemed under section 25(b) ~~as to have been licensed~~ (as the case may be), the first-mentioned individual shall, upon such commencement, be ~~regarded~~deemed as -

² **Members considered Paper CSA 15/01 at the Bills Committee meeting on 14 December 2001 and did not propose further change to this clause. We propose this additional amendment to rectify an omission. With the further amendment, exempted dealers and investment advisers will not have to have their substantial shareholders approved by the SFC during the two-year transitional period. This is same as the requirement regarding responsible officers.**

- (i) ¹(if paragraph (a) applies to the first-mentioned individual) to be a person whose name ~~is~~ has been entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as engaged by the institution in respect of that regulated activity;
- (ii) ¹(if paragraph (b) applies to the first-mentioned individual) to have been licensed as a licensed representative under section 119(1) of this Ordinance for that regulated activity (subject to the condition specified in section 50) and ~~as~~ accredited to the corporation, partnership or individual (in its capacity as a licensed corporation by virtue of section 25(b)),

¹and, subject to section 52, shall be so ~~regarded~~ deemed for a period of 2 years from such commencement.

Partnerships

27. Subject to section 54, a partnership which immediately before the commencement of Part V of this Ordinance is registered -

- (a) ¹under the repealed Securities Ordinance as a dealer shall, upon such commencement, be ~~regarded~~ deemed to be ~~as~~ a licensed corporation that ~~is~~ has been licensed under section 115(1) of this Ordinance for

Type 1, Type 4, Type 6 and (subject to the condition specified in section 50) Type 9 regulated activities;

(b) ¹under the repealed Securities Ordinance as an investment adviser shall, upon such commencement, be ~~regarded~~deemed to be as a licensed corporation that ~~is~~has been licensed under section 115(1) of this Ordinance for Type 4, Type 6 and (subject to the condition specified in section 50) Type 9 regulated activities;

(c) ¹under the repealed Commodities Trading Ordinance as a dealer shall, upon such commencement, be ~~regarded~~deemed to be as a licensed corporation that ~~is~~has been licensed under section 115(1) of this Ordinance for Type 2, Type 5 and (subject to the condition specified in section 51) Type 9 regulated activities;

(d) ¹under the repealed Commodities Trading Ordinance as a commodity trading adviser shall, upon such commencement, be ~~regarded~~deemed to be as a licensed corporation that ~~is~~has been licensed under section 115(1) of this Ordinance for Type 5 and (subject to the condition specified in section 51) Type 9 regulated activities,

¹and ~~as having~~to have complied with the requirement of section 124(1)(a) and (b) of this Ordinance, and, subject to section 52,

shall be so ~~regarded~~deemed for a period of 2 years from such commencement.

28. ¹Subject to section 54, where a partnership is ~~regarded~~deemed under section 27 ~~as to be a~~ licensed corporation, any partner of that partnership who immediately before the commencement of Part V of this Ordinance is registered -

- (a) ¹under the repealed Securities Ordinance as a dealer of that partnership shall, upon such commencement, be ~~regarded~~deemed as to have been licensed as a licensed representative under section 119(1) of this Ordinance for Type 1, Type 4, Type 6 and (subject to the condition specified in section 50) Type 9 regulated activities and ~~as~~ accredited to that licensed corporation;
- (b) ¹under the repealed Securities Ordinance as an investment adviser of that partnership shall, upon such commencement, be ~~regarded~~deemed to have been ~~as~~ licensed as a licensed representative under section 119(1) of this Ordinance for Type 4, Type 6 and (subject to the condition specified in section 50) Type 9 regulated activities and ~~as~~ accredited to that licensed corporation;
- (c) ¹under the repealed Commodities Trading Ordinance as a dealer of that partnership shall, upon such commencement, be ~~regarded~~deemed to have been as

licensed as a licensed representative under section 119(1) of this Ordinance for Type 2, Type 5 and (subject to the condition specified in section 51) Type 9 regulated activities and ~~as~~ accredited to that licensed corporation;

- (d) ¹under the repealed Commodities Trading Ordinance as a commodity trading adviser of that partnership shall, upon such commencement, be ~~regarded~~deemed to have been as licensed as a licensed representative under section 119(1) of this Ordinance for Type 5 and (subject to the condition specified in section 51) Type 9 regulated activities and ~~as~~ accredited to that licensed corporation,

¹and ~~as~~ approved under section 125(1) of this Ordinance as a responsible officer of that licensed corporation, and, subject to section 52, shall be so ~~regarded~~deemed for a period of 2 years from such commencement.

29. ¹Subject to section 54, where a partnership is ~~regarded~~deemed under section 27 ~~as to be a~~ licensed corporation, any individual who immediately before the commencement of Part V of this Ordinance is registered -

- (a) ¹under the repealed Securities Ordinance as a dealer's representative of that partnership shall, upon such commencement, be ~~regarded~~deemed to have

~~been as~~-licensed as a licensed representative under section 119(1) of this Ordinance for Type 1, Type 4, Type 6 and (subject to the condition specified in section 50) Type 9 regulated activities and ~~as~~ accredited to that licensed corporation;

(b) ¹under the repealed Securities Ordinance as an investment representative of that partnership shall, upon such commencement, be ~~regarded~~deemed to have been as-licensed as a licensed representative under section 119(1) of this Ordinance for Type 4, Type 6 and (subject to the condition specified in section 50) Type 9 regulated activities and ~~as~~-accredited to that licensed corporation;

(c) ¹under the repealed Commodities Trading Ordinance as a dealer's representative of that partnership shall, upon such commencement, be ~~regarded~~deemed to have been as-licensed as a licensed representative under section 119(1) of this Ordinance for Type 2, Type 5 and (subject to the condition specified in section 51) Type 9 regulated activities and ~~as~~-accredited to that licensed corporation;

(d) ¹under the repealed Commodities Trading Ordinance as a commodity trading adviser's representative of that partnership shall, upon such commencement, be

~~regarded as deemed to have been~~ licensed as a licensed representative under section 119(1) of this Ordinance for Type 5 and (subject to the condition specified in section 51) Type 9 regulated activities and ~~as~~ accredited to that licensed corporation,

¹and, subject to section 52, shall be so ~~regarded~~deemed for a period of 2 years from such commencement.

Sole-proprietorships

30. Subject to section 54, an individual who immediately before the commencement of Part V of this Ordinance is registered -

(a) ¹under the repealed Securities Ordinance as a dealer shall, upon such commencement, be ~~regarded~~-

~~as~~deemed -

(i) to be a licensed corporation that ~~is~~has been licensed under section 115(1) of this Ordinance for Type 1, Type 4, Type 6 and (subject to the condition specified in section 50) Type 9 regulated activities;

(ii) to have been licensed as a licensed representative under section 119(1) of this Ordinance for Type 1, Type 4, Type

6 and (subject to the condition specified in section 50) Type 9 regulated activities and ~~as~~ accredited to that licensed corporation; and

(iii) to have been approved under section 125(1) of this Ordinance as a responsible officer of that licensed corporation;

(b) ¹under the repealed Securities Ordinance as an investment adviser shall, upon such commencement, be ~~regarded as deemed~~ -

(i) to be a licensed corporation that ~~is~~ has been licensed under section 115(1) of this Ordinance for Type 4, Type 6 and (subject to the condition specified in section 50) Type 9 regulated activities;

(ii) to have been licensed as a licensed representative under section 119(1) of this Ordinance for Type 4, Type 6 and (subject to the condition specified in section 50) Type 9 regulated activities and ~~as~~ accredited to that licensed corporation; and

(iii) to have been approved under section 125(1) of this Ordinance as a responsible officer of that licensed corporation;

(c) ¹under the repealed Commodities Trading Ordinance as a dealer shall, upon such commencement, be ~~regarded as~~deemed -

(i) to be a licensed corporation that ~~is~~has been licensed under section 115(1) of this Ordinance for Type 2, Type 5 and (subject to the condition specified in section 51) Type 9 regulated activities;

(ii) to have been licensed as a licensed representative under section 119(1) of this Ordinance for Type 2, Type 5 and (subject to the condition specified in section 51) Type 9 regulated activities and ~~as~~ accredited to that licensed corporation; and

(iii) to have been approved under section 125(1) of this Ordinance as a responsible officer of that licensed corporation;

(d) ¹under the repealed Commodities Trading Ordinance as a commodity trading adviser shall, upon such commencement, be ~~regarded as~~deemed -

(i) to be a licensed corporation that ~~is~~has been licensed under section 115(1) of this Ordinance for Type 5 and (subject to the condition specified in section 51) Type 9 regulated activities;

(ii) to have been licensed as a licensed representative under section 119(1) of this Ordinance for Type 5 and (subject to the condition specified in section 51) Type 9 regulated activities and ~~as~~ accredited to that licensed corporation; and

(iii) to have been approved under section 125(1) of this Ordinance as a responsible officer of that licensed corporation,

¹and ~~as having~~to have complied with the requirement of section 124(1)(a) and (b) of this Ordinance, and, subject to section 52, shall be so ~~regarded~~deemed for a period of 2 years from such commencement.

31. ¹Subject to section 54, where an individual is ~~regarded~~deemed under section 30 ~~as~~to be a licensed corporation, any other individual who immediately before the commencement of Part V of this Ordinance is registered -

(a) ¹under the repealed Securities Ordinance as a dealer's representative of the first-mentioned individual shall, upon such commencement, be ~~regarded~~as deemed to have been licensed as a licensed representative under section 119(1) of this Ordinance for Type 1, Type 4, Type 6 and (subject to the condition specified in section 50)

Type 9 regulated activities and ~~as~~ accredited to that licensed corporation;

(b) ¹under the repealed Securities Ordinance as an investment representative of the first-mentioned individual shall, upon such commencement, be ~~regarded as~~ deemed to have been licensed as a licensed representative under section 119(1) of this Ordinance for Type 4, Type 6 and (subject to the condition specified in section 50) Type 9 regulated activities and ~~as~~ accredited to that licensed corporation;

(c) ¹under the repealed Commodities Trading Ordinance as a dealer's representative of the first-mentioned individual shall, upon such commencement, be ~~regarded as~~ deemed to have been licensed as a licensed representative under section 119(1) of this Ordinance for Type 2, Type 5 and (subject to the condition specified in section 51) Type 9 regulated activities and ~~as~~ accredited to that licensed corporation;

(d) ¹under the repealed Commodities Trading Ordinance as a commodity trading adviser's representative of the first-mentioned individual shall, upon such commencement, be ~~regarded as~~ deemed to have been licensed as a licensed representative under section 119(1) of this Ordinance for Type 5 and (subject

to the condition specified in section 51) Type 9 regulated activities and ~~as~~ accredited to that licensed corporation, and, subject to section 52, shall be so ~~regarded~~ deemed for a period of 2 years from such commencement.

Licensed banks

32. ¹Where immediately before the commencement of Part V of this Ordinance, a licensed bank would have fallen within the meaning of the definition of "investment adviser" in section 2(1) of the repealed Securities Ordinance but for paragraph (i) of that definition, it shall, upon such commencement, be ~~regarded as~~ deemed to have been registered under section 118(1) of this Ordinance for Type 4, Type 6 and (subject to the condition specified in section 50) Type 9 regulated activities, and, subject to section 52, shall be so ~~regarded~~ deemed for a period of 2 years from such commencement.

33. ¹Where immediately before the commencement of Part V of this Ordinance an individual is engaged by a licensed bank to perform any act which, after such commencement, would constitute a regulated function in relation to a regulated activity for which the bank is ~~regarded~~ deemed under section 32 ~~as~~ to have been registered, that individual shall, upon such commencement, be ~~regarded as~~ deemed to be a person whose name ~~is~~ has been entered

in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as engaged by the bank in respect of that regulated activity, and, subject to section 52, shall be so ~~regarded~~deemed for a period of 2 years from such commencement.

Persons providing automated trading services

34. ¹Where immediately before the commencement of Part V of this Ordinance, a person is carrying on a business in providing automated trading services, and the person is -

- (a) a corporation to which section 22(a) or (d) or 25(b)(i) applies;
- (b) a partnership to which section 25(b)(i) or 27(a) or (c) applies; or
- (c) an individual to whom section 25(b)(i) or 30(a) or (c) applies,

then in relation to the person, any of those sections that applies to the person as such corporation, partnership or individual (as the case may be) shall be read and construed as if Type 7 regulated activity were added as a regulated activity for which the person is ~~regarded as~~deemed to have been licensed (in its capacity as a licensed corporation by virtue of that section), and the provisions of sections 22 to 59 shall be construed accordingly.

35. Where section 34 is applicable to a corporation, partnership or individual ("the first-mentioned individual"), then in relation to -

- (a) a director of the corporation to whom section 23(a) or (d) applies;
- (b) an individual (not being a director) of the corporation to whom section 24(a) or (d) applies;
- (c) a partner of the partnership to whom section 28(a) or (c) applies;
- (d) an individual (not being a partner) of the partnership to whom section 29(a) or (c) applies;
- (e) the first-mentioned individual, to whom section 30(a)(ii) and (iii) or (c)(ii) and (iii) applies;
- (f) an individual to whom section 31(a) or (c) applies in relation to the first-mentioned individual; or
- (g) an individual to whom section 26(ii) applies in relation to the corporation, partnership or first-mentioned individual,

any of those sections that applies to such director, partner or individual (including the first-mentioned individual) (as the case may be) shall be read and construed as if Type 7 regulated activity were added as a regulated activity for which such director, partner or individual is ~~regarded as~~ deemed to have been licensed (in his capacity as a licensed representative by virtue of that section) or approved (in his capacity as a responsible officer by virtue of that section) and the provisions of sections 22 to 59 shall be

construed accordingly.

36. ¹Where immediately before the commencement of Part V of this Ordinance, a person is carrying on a business in providing automated trading services, and the person is an authorized financial institution to which section 25(a)(i) applies, then in relation to the institution, that section shall be read and construed as if Type 7 regulated activity were added as a regulated activity for which the institution is ~~regarded as~~deemed to have been registered and the provisions of sections 22 to 59 shall be construed accordingly.

* * * * *

Persons dealing in futures contracts solely with persons
outside Hong Kong

45A. For the purposes of sections 47, 48 and 49, "dealing in futures contracts" (期貨合約交易) has the meaning assigned to it by Part 2 of Schedule 6 to this Ordinance.³

* * * * *

³ **This additional technical amendment to Paper CSA15/01 is consequential to the further amendment proposed to the definition of "dealing in futures contracts" in Schedule 1 which makes that definition no longer applicable here.**

Deemed condition for Type 9 regulated activity

50. Where a person is -

(a) immediately before the commencement of Part V of this Ordinance -

(i) registered under the repealed Securities Ordinance as a dealer, investment adviser, dealer's representative or investment representative;

(ii) declared under the repealed Securities Ordinance as an exempt dealer or an exempt investment adviser; or

(iii) a licensed bank referred to in section 32; and

(b) ~~regarded deemed~~ under section 22, 23, 24, 25, 26, 27, 28, 29, 30, 31 or 32 as to have been licensed or registered for Type 9 regulated activity under Part V of this Ordinance,

then without prejudice to section 54, such licence or registration referred to in paragraph (b) shall be subject to a condition that the person shall not provide a service of managing a portfolio of futures contracts for another person.

51. Where a person is -

(a) immediately before the commencement of Part V of this Ordinance registered under the repealed Commodities Trading Ordinance as a dealer, commodity trading adviser, dealer's representative or commodity trading adviser's representative; and

(b) ~~1~~¹~~regarded-deemed~~ under section 22, 23, 24, 27, 28, 29, 30 or 31 ~~as-to have been~~ licensed for Type 9 regulated activity under Part V of this Ordinance,

then without prejudice to section 54, such licence referred to in paragraph (b) shall be subject to a condition that the person shall not provide a service of managing a portfolio of securities for another person.

Further provisions on transitional period

52. (1) Where, within 2 years from the commencement of Part V of this Ordinance -

(a) ~~1~~¹a corporation ~~regarded-deemed~~ under section 22 or 25(b) ~~as-to have been~~ licensed for a regulated activity applies to be licensed for that regulated activity under section 115(1) of this Ordinance, then without prejudice to subsection (3)(C), it shall ~~continue to be regarded-deemed~~ -

(i) ~~as-to have been~~ so licensed; and

(ii) (in the case of a corporation ~~regarded~~
deemed under section 22 to have been as
licensed) ~~as having to have~~ complied with
the requirement of section 124(1)(a) and
(b) of this Ordinance in relation to that
regulated activity,

~~until the notice in writing of the Commission's~~
~~final decision of that application has been served~~
~~on the applicant licence applied for is granted or~~
the Commission's refusal to grant the licence takes
effect as a specified decision under section 224,
as the case may be⁴;

(b) ¹a company, or an overseas company that has complied
with the provisions of Part XI of the Companies
Ordinance (Cap. 32) for the registration of
documents, applies to be licensed under section
115(1) of this Ordinance for a regulated activity
and -

(i) all the partners of a partnership
~~regarded~~ deemed under section 25(b) or
27 ~~as to have been~~ licensed for that

⁴ Members considered Paper CSA 15/01 at the Bills Committee meeting on 14 December 2001 and did not propose further change to this clause. We propose this additional amendment such that the relevant time to determine when a corporation, etc ceases to be deemed licensed, is when the relevant decision of the SFC has been confirmed by the Securities and Futures Appeals Tribunal if an appeal has been lodged and not merely when the SFC has handed out its decision.

regulated activity are shareholders of the applicant;

(ii) the collective shareholdings of such partners would have made them a majority shareholder of the applicant if they were one single shareholder of the applicant; and

(iii) the applicant satisfies the Commission that -

(A) it is incorporated for the purposes of taking over the business carried on by that partnership in that regulated activity; and

(B) sufficient arrangements have been or will be made to effect the transfer of such business from that partnership to the applicant,

then without prejudice to subsection (3)(C), that partnership shall ~~continue to be regarded~~ deemed

-

(A) ~~as to have been~~ so licensed; and

(B) (in the case of a partnership ~~regarded~~ deemed under section 27 ~~as to have been~~ licensed) ~~as having to have~~ complied with the requirement of section 124(1)(a) and

(b) of this Ordinance in relation to that regulated activity,

⁴until the licence applied for is granted or the Commission's refusal to grant the licence takes effect as a specified decision under section 224, as the case may be; notice in writing of the Commission's final decision of that application has been served on the applicant;

(c) ¹a company, or an overseas company that has complied with the provisions of Part XI of the Companies Ordinance (Cap. 32) for the registration of documents, applies to be licensed under section 115(1) of this Ordinance for a regulated activity and -

(i) an individual ~~regarded~~ deemed under section 25(b) or 30 ~~as to have been~~ licensed for that regulated activity is a majority shareholder of the applicant; and

(ii) the applicant satisfies the Commission that -

(A) it is incorporated for the purposes of taking over the business carried on by that individual in that regulated activity; and

(B) sufficient arrangements have been or will be made to effect the transfer of such business from that individual to the applicant, then without prejudice to subsection (3)(C), that individual shall ~~continue to be regarded~~ deemed -

(A) ~~as to have been~~ so licensed;

(B) (in the case of an individual ~~regarded~~ deemed under section 30 ~~as to have been~~ licensed) ~~as having to have~~ complied with the requirement of section 124(1)(a) and (b) of this Ordinance in relation to that regulated activity; and

(C) (in the case of an individual ~~regarded~~ deemed under section 30 ~~as to have been~~ licensed) ~~as having to have~~ been approved under section 125(1) of this Ordinance as a responsible officer in relation to that licensed corporation,

⁴until the licence applied for is granted or the Commission's refusal to grant the licence takes effect as a specified decision under section 224, as the case may be; notice in writing of the Commission's final decision of that application has been served on the applicant;

(d) ¹a director ~~regarded~~ deemed under section 23, or a partner ~~regarded~~ deemed under section 28, as--

(i) to have been licensed for a regulated activity and ~~as~~ accredited to a corporation; and

(ii) to have been approved as a responsible officer of that corporation,

applies to be licensed for the regulated activity under section 119(1) of this Ordinance, he shall, subject to subsection (6), ~~continue to be so regarded~~ deemed until the licence applied for is granted or the Commission's refusal to grant the licence takes effect as a specified decision under section 224, as the case may be⁴;

~~(A) until the notice in writing of the Commission's final decision of that application has been served on him; or~~

~~(B) where the application is refused, until the expiration of 21 days after the notice in writing of the Commission's final decision of that application has been served on him or (if an application is made under section 211 of this Ordinance for review of that decision) the determination of the review;~~

(e) ¹an individual ~~regarded~~ deemed under section 24, 26(ii), 29 or 31 ~~as to have been~~ licensed for a regulated activity and accredited to a corporation applies to be licensed for the regulated activity under section 119(1) of this Ordinance, he shall, subject to subsection (6), ~~continue to be so~~ regarded deemed until the licence applied for is granted or the Commission's refusal to grant the licence takes effect as a specified decision under section 224, as the case may be⁴;

- ~~_____ (i) until the notice in writing of the Commission's final decision of that application has been served on him; or~~
- ~~_____ (ii) where the application is refused, until the expiration of 21 days after the notice in writing of the Commission's final decision of that application has been served on him or (if an application is made under section 211 of this Ordinance for review of that decision) the determination of the review.~~

(2) ¹Where, within 2 years from the commencement of Part V of this Ordinance, an authorized financial institution ~~regarded~~ deemed under section 25(a) ~~as to have been~~ registered, or a licensed bank ~~regarded~~ deemed under section 32 ~~as to have been~~ registered, for a regulated activity, applies to be registered for that

regulated activity under section 118(1) of this Ordinance, then without prejudice to subsection (3)(C) -

- (a) ¹it shall ~~continue to be regarded as~~ deemed to have been so registered; and
- (b) ¹an individual ~~regarded deemed~~ under section 26(i) or 33 ~~as to be~~ a person whose name is has been entered in the register referred to in that section as engaged by the institution or licensed bank (as the case may be) in that regulated activity shall, subject to subsection (6), ~~continue to be so regarded deemed~~,

until the applicant is registered pursuant to the application or the Commission's refusal to register the applicant takes effect as a specified decision under section 224, as the case may be ~~notice in writing of the Commission's final decision of that application has been served on the applicant~~⁴.

(3) Where -

- (a) an application referred to in subsection (1)(a), (b) or (c) or (2) in relation to a regulated activity is refused; or
- (b) such an application is refused and the applicant applies for review of the refusal under section 211 of this Ordinance, and the refusal is confirmed by the Securities and Futures Appeals Tribunal,

then -

- (i) in the case of an application referred to in subsection (1)(a) or (2), the applicant;
- (ii) in the case of an application referred to in subsection (1)(b), the partnership from which the applicant intends to take over the business in that regulated activity; or
- (iii) in the case of an application referred to in subsection (1)(c), the individual from whom the applicant intends to take over the business in that regulated activity,

shall -

- (A) cease to carry on that regulated activity within 21 days of the refusal or the confirmation (as the case may be) or within such further period as the Commission notifies the applicant, partnership or individual (as the case may be) in writing;
- (B) comply with such reasonable conditions as the Commission may impose for such cessation; and
- (C) ¹before such cessation but in any event not later than the 21 days or further period mentioned in paragraph (A) and solely for the purpose of winding up its business in that regulated activity, continue to be ~~regarded as deemed to have been~~ licensed or registered or ~~having to have~~ complied with the requirement of section 124(1)(a) and (b) of this Ordinance or ~~having to have~~ been approved

as a responsible officer for or in relation to that regulated activity, as may be applicable, and may be subject to the exercise of the power of the Commission under section 193 of this Ordinance as if the licence or registration referred to in paragraph (C) in respect of the applicant, partnership or individual (as the case may be) had been revoked on the occurrence of the circumstances specified in paragraphs (a) and (b) (whichever is applicable).

(4) ¹Where a person is ~~regarded~~ deemed under section 22, 23, 24, 25, 26, 27, 28, 29, 30, 31 or 32 ~~as to have been~~ licensed or registered for a regulated activity or approved as a responsible officer, the provisions of this Ordinance shall apply to or in relation to the person as they apply to or in relation to a person who is licensed or registered for that regulated activity or approved as a responsible officer (as the case may be) with such modifications under section 131 of this Ordinance as may be necessary in case he is a partnership or an individual carrying on a business in that regulated activity (as the case may be).

(5) ¹Where an individual's name is ~~regarded~~ deemed -

- (a) under section 26(i); or
- (b) under section 33,

~~as to have been~~ entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as engaged by the institution concerned or the bank concerned in respect of a regulated activity, the provisions of this Ordinance shall apply to or in relation to the individual as they apply to

or in relation to an individual whose name is entered in such register in respect of that regulated activity with such modifications under section 131 of this Ordinance as may be necessary.

(6) If -

(a) ¹a director of a corporation who is ~~regarded-deemed~~ under section 23 as--

(i) to have been licensed as a licensed representative and ~~as~~-accredited to that corporation; and

(ii) to have been approved under section 125(1) of this Ordinance as a responsible officer of that corporation,

ceases to be a director of that corporation, he shall upon such cessation cease to be so ~~regarded-deemed~~;

(b) ¹a partner of a partnership who is ~~regarded-deemed~~ under section 28 as--

(i) to have been licensed as a licensed representative and ~~as~~-accredited to that partnership (~~regarded-deemed~~ under section 27 ~~as~~-to be a licensed corporation); and

(ii) to have been approved under section 125(1) of this Ordinance as a responsible officer of that corporation,

ceases to be a partner of that partnership, he shall upon such cessation cease to be so ~~regarded~~deemed ;

(c) ¹an individual who is ~~regarded~~deemed under section 24, 26(ii), 29 or 31 ~~as to have been licensed~~ as a licensed representative and ~~as~~ accredited to a licensed person ceases to act for or on behalf of that licensed person in relation to the regulated activity for which he is so ~~regarded~~deemed , he shall upon such cessation cease to be so ~~regarded~~deemed ;

(d) ¹an individual who is ~~regarded~~deemed under section 26(i) or 33 ~~as to be a person whose name is~~ has been entered in the register referred to in that section ceases to be engaged by the institution concerned or the bank concerned to perform any act which constitutes a regulated function in relation to the relevant regulated activity, he shall upon such cessation cease to be so ~~regarded~~deemed .

* * * * *

Miscellaneous

54. Where a person is -

(a) immediately before the commencement of Part V of this Ordinance -

(i) registered under the repealed Securities Ordinance as a dealer, investment adviser, securities margin financier, dealer's representative, investment representative or securities margin financier's representative;

(ii) declared under the repealed Securities Ordinance as an exempt dealer or an exempt investment adviser;

(iii) registered under the repealed Commodities Trading Ordinance as a dealer, commodity trading adviser, dealer's representative or commodity trading adviser's representative; or

(iv) licensed under the repealed Leveraged Foreign Exchange Trading Ordinance as a leveraged foreign exchange trader or representative; and

(b) ~~regarded deemed~~ under section 22, 23, 24, 25, 27, 28, 29, 30, 31 or 32 as to have been licensed or registered under Part V of this Ordinance,

¹any condition that has been attached or imposed by the Commission to the registration, exemption or licence referred to in paragraph (a) which is in force immediately before such commencement shall,

upon such commencement, ~~be deemed to have been regarded as being~~ imposed in respect of the licence or registration referred to in paragraph (b).

55. Where -

(a) approval for premises to be used for keeping records or documents has been given by the Commission under the repealed Securities and Futures Commission Ordinance or the repealed Leveraged Foreign Exchange Trading Ordinance⁵; and

(b) the approval subsists immediately before the commencement of Part V of this Ordinance,

~~the approval shall, upon such commencement, be deemed to have been regarded as given~~ under section 129 of this Ordinance.

56. Where -

(a) approval for a subordinated loan has been given by the Commission under the Financial Resources Rules (Cap. 24 sub. leg.) repealed under section 392 of this Ordinance or the Leveraged Foreign Exchange Trading (Financial Resources) Rules (Cap. 451 sub.

⁵ **Members considered Paper CSA 15/01 at the Bills Committee meeting on 14 December 2001 and did not propose further change to this clause. We propose this additional amendment to rectify the omission as approval for premises to be used for keeping records and documents has been granted also under the Leveraged Foreign Exchange Trading Ordinance.**

leg.) repealed under section 392 of this Ordinance;
and

- (b) the approval subsists immediately before the commencement of Part V of this Ordinance,

¹the approval shall, upon such commencement, be deemed to have been regarded as given under this Ordinance.

⁶56A. Where -

- (a) approval to be a substantial shareholder has been given by the Commission under the repealed Securities and Futures Commission Ordinance or the repealed Leveraged Foreign Exchange Trading Ordinance; and

- (b) the approval subsists immediately before the commencement of Part V of this Ordinance,

the approval shall, upon such commencement, be deemed to have been given under section 130A of this Ordinance.

57. Where -

- (a) an application is made before the commencement of Part V of this Ordinance for approval to be a substantial shareholder under section 26A of the repealed Securities and Futures Commission

⁶ We propose this additional amendment to Paper CSA 15/01 to rectify the omission such that approval of substantial shareholders granted under the existing regime would be deemed to have continued effect under the new regime.

~~Ordinance or section 14A of the repealed Leveraged Foreign Exchange Trading Ordinance⁷; and~~

- (b) immediately before such commencement the application has not been granted, refused or withdrawn,

the application shall, upon such commencement, be treated as an application to become a substantial shareholder under section 130A of this Ordinance.

~~⁵⁸. Where the Commission has commenced action (including the making of any inquiry) before the commencement of Part V of this Ordinance under—~~

~~(a) section 55 or 56 of the repealed Securities Ordinance;~~

~~(b) section 35 or 36 of the repealed Commodities Trading Ordinance; or~~

~~(c) section 11 or 12 of the repealed Leveraged Foreign Exchange Trading Ordinance,~~

~~and the action is pending immediately before such commencement,~~

⁷ **Members considered Paper CSA 15/01 at the Bills Committee meeting on 14 December 2001 and did not propose further change to this clause. We propose this additional amendment to rectify the omission as applications for approval to become substantial shareholders can also be made under the Leveraged Foreign Exchange Trading Ordinance.**

⁸ **Clause 58 deals with misconduct of currently licensed or registered persons in respect of which regulatory action has been initiated by the SFC under relevant existing law but not completed on commencement of the SF [Ordinance]. We propose further amendment to delete this clause and have the subject matter dealt with under clause 63 so that the existing law applies to pre-commencement misconduct irrespective of whether the SFC has initiated action under the existing law. Amendments are also proposed to clause 63 in order to apply the same policy to currently exempted persons.**

~~the action shall, upon such commencement, be regarded as having been commenced under this Ordinance and may be continued in accordance with section 175 or 187 of this Ordinance.~~

* * * * *

Part IX of this Ordinance (Discipline, etc.)

* * * * *

^s63. Where, before the commencement of Part IX of this Ordinance

-

(a) ~~before the commencement of Part IX of this Ordinance~~

any conduct, event, matter or thing that occurred can be the subject of -

(i) the exercise of any power under section 35 or 36 of the repealed Commodities Trading Ordinance;

(ii) the exercise of any power under section 55, ~~or 56,~~ 60 or 61 of the repealed Securities Ordinance; or

(iii) the exercise of any power under section 11 or 12 of the repealed Leveraged Foreign Exchange Trading Ordinance; and

~~(b) no such the power has not been exercised before such commencement; or,~~

(b) any power has been exercised under any of the provisions referred to in paragraphs (a)(i), (ii)

and (iii), and the exercise of the power would, but for the enactment of this Ordinance, continue to have force and effect on or after such commencement,

then -

- (i) (where paragraph (a) applies) the power may be exercised or (where paragraph (b) applies) the exercise of the power shall continue to have force and effect, as if this Ordinance had not been enacted; and
- (ii) subject to section 65, the provisions of the repealed Commodities Trading Ordinance, the repealed Securities Ordinance or the repealed Leveraged Foreign Exchange Trading Ordinance (as the case may be) and the repealed Securities and Futures Commission Ordinance (where applicable) shall continue to apply to the exercise of the power and to any matters relating thereto as if this Ordinance had not been enacted.

64. ¹Where -

- (a) the exercise of any power under section 63 results in the revocation of any declaration of exemption or the revocation or suspension of any registration or licence of any person, or the suspension of any such registration or licence continues to have force and effect by virtue of that section and

(b) the ~~registration or licence~~person has, by reason of the declaration or registration or licence referred to in paragraph (a), been deemed under any of the provisions ~~virtue of~~ sections 22 to 37, ~~been regarded as to have been~~ a registered or licensed ~~ee~~ under this Ordinance,

the registration or licence of the person under this Ordinance shall, notwithstanding sections 22 to 37, be regarded as having been revoked or suspended (as the case may be) on the same terms and conditions on which the declaration or registration or licence referred to in paragraph (a) is revoked or suspended.

* * * * *

Part XV of this Ordinance (Disclosure of Interests)

* * * * *

78. Any exemption that is granted under section 2A of the repealed Securities (Disclosure of Interests) Ordinance and is in effect immediately before the commencement of Part XV of this Ordinance shall, upon such commencement, be deemed to have been ~~continue to have effect as if it were granted~~, subject to the same conditions as were applicable had this Ordinance not been enacted¹, under section 300 of this Ordinance.

81. Where an investigation is carried out under the repealed Securities (Disclosure of Interests) Ordinance but has not been concluded before the commencement of Part XV of this Ordinance,

=

(a) any power that is exercisable under that Ordinance for the purposes of the investigation shall, upon such commencement, remain exercisable as if this Ordinance had not been enacted; and

(b) the provisions of the repealed Securities (Disclosure of Interests) Ordinance shall continue to apply to the exercise of the power and to any other matters relating thereto as if this Ordinance had not been enacted.⁹

Financial Services Bureau
Securities and Futures Commission
7 January 2002

⁹ We accept the comment from the Legal Service Division of the Legislative Council and have included a new paragraph (b) for completeness.

Supplementary Note to
Annex 2 to Paper No. CSA15/01
dated 6 December 2001

SCHEDULE 9 [ss. 230, 232, 234,
392, 393, 394 & 395]

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PART 2

CONSEQUENTIAL AND SUPPLEMENTAL AMENDMENTS

* * * * *

Item Enactment Amendment

(New Item)

¹26. Banking In section 19, in the new section
(Amendment) 92(2)(b), repeal everything after "which"
Ordinance 2001 and substitute "section 102(1) of the
(32 of 2001) Securities and Futures Ordinance (of
2002) does not apply to the advertisement,
invitation or document by virtue of
section 102(3)(f), (g), (h) or (ha) of
that Ordinance or the issue of which is
authorized under section 104(1) of that
Ordinance;".

Financial Services Bureau
Securities and Futures Commission
7 January 2002

¹ **The Banking (Amendment) Ordinance 2001 (32 of 2001) (BAO 2001) was enacted in December 2001 and is not expected to commence before resumption of the Second Reading of the SF Bill. Based on this assumption, we propose this amendment to ensure the effective operation of the BAO 2001. We shall keep the need for this technical amendment under review before submitting formal Committee Stage Amendments to resume the Second Reading of the Bill.**